



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

200716029

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

U.I.L.: 402.03-00

JAN 26 2007

T:EP:RA:TZ

Legend:

Taxpayer A =

Taxpayer B =

Company P =

Plan X =

Plan Y =

Plan Z =

Company L =

Amount C =

Amount D =

Amount E =

Amount F =

Amount G =

Amount H =

IRA X =

Dear

This is in response to a request dated February 10, 2006, as supplemented by correspondence dated, October 12, 2006, October 25, 2006, November 30, 2006, December 18, 2006, and January 18, 2007, submitted on your behalf by your authorized representative for a letter ruling to waive the 60-day rollover requirement contained in section 402(c)(3) of the Internal Revenue Code ("Code").

The following facts and representation have been submitted under penalties of perjury in support of the ruling requested.

Taxpayer A participated in three retirement plans, Plan X, Plan Y, and Plan Z maintained by Company P. Taxpayer A represents that he requested Company P's benefits department to rollover the account balances in Plan X, Plan Y, and Plan Z to an individual retirement arrangement, IRA X, at Company L.

Documentation submitted by Taxpayer A shows that on . . . he received a net distribution from Plan X in the amount of Amount C. Federal income taxes in the amount of Amount D were withheld from the gross distribution from Plan X (Amount E). On that same day, Taxpayer A also received a distribution in the amount of Amount F, which represents employee contributions from Plan X.

Documentation submitted by Taxpayer A shows that on . . . he received a distribution in the amount of Amount G from Plan Y and that on . . . he received a distribution in the amount of Amount H from Plan Z.

Documentation submitted by Taxpayer A indicates that rollover deposits in the amounts of Amount C, Amount F and Amount H were made to IRA X on April 12, 2004. Documentation submitted by Taxpayer A further indicates that a rollover deposit in the amount of Amount G was made to IRA X on . . . The rollover of these distributions from Plan X, Plan Y and Plan Z, respectively, were made within the 60-day rollover period applicable to such distributions.

Taxpayer A states that it was his intention to have his account balances in Plan X, Plan Y and Plan Z, transferred in direct rollovers to IRA X, but that Company P's benefits department, instead of transferring his Plan X account balance directly to IRA X, issued a check to him in the amount of Amount C, which he deposited into IRA X on . . . In making the distribution directly to Taxpayer A, Company P withheld federal income taxes in the amount of Amount D from the gross distribution from Plan X.

Taxpayer A states that when he received the check from Company P, he requested, in writing, that it transfer Amount D to IRA X. Taxpayer A also states

that he was informed by Company P that a computer processing error resulted in the issuance of a check to Taxpayer A of the taxable portion of his Plan X account balance instead of such amount being rolled over into IRA X. Taxpayer A states that despite numerous requests to Company P, it did not correct the error. To show his intent to have the entire taxable portion of his Plan X account balance rolled over to an IRA (the net distribution of Amount C having been rolled over into IRA X on \_\_\_\_\_ Taxpayer A, from his personal funds, contributed Amount D to IRA X on \_\_\_\_\_ Documentation submitted by Taxpayer A indicates that Amount D was credited to IRA X on \_\_\_\_\_ a date that is beyond the 60-day rollover period for the distribution from Plan X.

Taxpayer A and his spouse, Taxpayer B, filed their 2004 tax return showing that Amount D was not rolled over to an IRA within the applicable 60-day rollover period. Taxpayer A states that the failure of Company P to make a direct rollover of his entire Plan X account balance to IRA X, as he instructed, caused him to miss the 60-day rollover period with respect to the distribution of Amount D from IRA X.

Based on the above facts and representations, Taxpayer A requests that the Service waive the 60-day rollover requirement with respect to the distribution of Amount D from Plan X.

Section 402(a)(1) of the Code provides that except as otherwise provided in this section, any amount actually distributed to any distributee by any employees' trust described in section 401(a) of the Code which is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, in the manner provided under section 72 (relating to annuities).

Section 402(c) of the Code provides rules governing rollovers of amounts from exempt trusts to eligible retirement plans, including IRAs.

Section 402(c)(1) of the Code provides, generally, that if any portion of an eligible rollover distribution from a qualified trust is paid to the employee in an eligible rollover distribution and the employee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of property distributed, such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

Section 402(c)(2) of the Code provides that the maximum amount of an eligible rollover distribution to which paragraph (1) applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to paragraph (1)).

Section 402(c)(4) of the Code defines "eligible rollover distribution" as any distribution to any employee of all or a portion of the balance to the credit of an employee in a qualified trust, except that such term shall not include

(A) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made-

(i) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary, or

(ii) for a specified period of 10 years or more.

(B) any distribution to the extent the distribution is required under section 401(a)(9), and

(C) any distribution which is made upon hardship of the employee.

Section 402(c)(8) of the Code defines "eligible retirement plan" as (o) an individual retirement account described in section 408(a); (ii) an individual retirement annuity described in section 408(b) (other than an endowment contract); (iii) a qualified trust; (iv) an annuity plan described in section 403(a); (v) an eligible deferred compensation plan described in section 457(b) maintained by an eligible employer as described in section 457(e)(1)(A); and (vi) an annuity contract described in section 403(b).

Section 402(c)(3)(A) of the Code provides, generally, that section 402(c)(1) shall not apply to any transfer of a distribution made after the 60<sup>th</sup> day following the day on which the distributee received the property distributed.

Section 402(c)(3)(B) of the Code provides that the Secretary may waive the 60-day requirement under subparagraph (A) where failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The documentation submitted by Taxpayer A is consistent with his assertion that he failed to make a rollover of Amount D to IRA X within the applicable 60-day period due to a computer processing error that resulted in the taxable portion of this Plan X account balance being distributed to him instead of being rolled over to IRA X as he requested.

Therefore, assuming that the distribution from Plan X qualifies as an eligible rollover distribution under Code section 402(c)(4), pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D from IRA X. Documentation submitted by Taxpayer A shows that Amount D was deposited into IRA X on \_\_\_\_\_ Provided all other requirements of section 402(c)(1) of the Code, except the 60-day rollover requirement, are met with respect to such contribution, Amount D will be considered a valid rollover contribution within the meaning of Code section 402(c)(1).

This ruling does not authorize the rollover of amounts, if any, that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to whether the distributions from Plan X, Plan Y and Plan Z qualify as eligible rollover distributions under Code section 402(c)(4).

This ruling assumes that IRA X meets the requirement of Code section 408(a).

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

Pursuant to a power of attorney on file with this office, a copy of this ruling letter is being sent to your authorized representative.

200716029

If you have any questions please contact

SE:T:EP:RA:T:2.

Sincerely yours,

**JOYCE E. FLOYD**

Joyce E. Floyd, Manager  
Employee Plans Technical Group 2

Enclosures:

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